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5 IN THE SUPREME COURT
6 STATE OF ARIZONA

7 PETITION TO REPEAL RULE
8 6(E)(4)(e)(2) OF THE ARIZONA
RULES OF PROTECTIVE ORDER
9 PROCEDURE, SUPREME COURT NO.
10 R-06-0032

Supreme Court No. R-09-0045

**Comment of the State Bar of
Arizona on Petition to Repeal Rule
6(E)(4)(e)(2) of the Arizona Rules
of Protective Order Procedure,
Supreme Court No. R-06-0032**

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12 The State Bar of Arizona opposes the repeal of Rule 6(E)(4)(e)(2) of the
13 Arizona Rules of Protective Order Procedure proposed by petition R-09-0045.
14 In his petition to the Arizona Supreme Court, Petitioner Mike Palmer requests
15 that Rule 6(E)(4)(e)(2), pertaining to weapon and firearm prohibitions for
16 Injunctions Against Harassment, be repealed. If approved, a judicial officer
17 could no longer prohibit the possession, purchase or receipt of a weapon or
18 firearm by a person against whom Injunction Against Harassment has been
19 ordered. Petitioner states two grounds for repeal: 1) there is no basis for the
20 rule; and 2) when invoked, the rule violates Second Amendment rights of the
21 individual. Neither of petitioner's grounds for repeal has merit. First, the
22 basis for the Rule can be found in the plain language of A.R.S. § 12-
23 1809(F)(3), which states that a judicial officer may "Grant relief necessary for
24 the protection of the alleged victim and other specifically designated persons
25 proper under the circumstances." Second, the State's legitimate and proper
police powers give power to the judicial officer to implement such a restriction,

1 so long as it is not overbroad. *City of Tucson v. Rineer*, 193 Ariz. 160, 971 P.2d
2 207 (Ariz. 1998).

3 In accordance with A.R.S. § 12-1809, Rule 6(E)(4)(a) requires a judicial
4 officer to find “reasonable evidence of harassment of the plaintiff by the
5 defendant” before an Injunction Against Harassment will issue. After such a
6 finding, A.R.S. § 12-1809(F)(3) allows the judicial officer to “Grant relief
7 necessary for the protection of the alleged victim and other specifically
8 designated persons proper under the circumstances.” Therefore, Rule
9 6(E)(4)(e)(2) does not expand the judicial officer’s power under A.R.S. § 12-
10 1809, but instead provides guidance to the judicial officer as to available
11 methods of relief necessary for the plaintiff’s protection. The judicial officer’s
12 methods, of course, must be deemed reasonable, necessary and cannot violate
13 the defendant’s fundamental rights.

14 Petitioner is correct, at minimum, in proposing that Rule 6(E)(4)(e)(2)
15 could, in application, violate the Second Amendment to the Constitution and/or
16 A.R.S. Const. Art. 2 § 26, but that does not mean that Rule 6(E)(4)(e)(2) or
17 A.R.S. § 12-1809 is facially invalid. Legislative enactments should be
18 presumed to be constitutional. *State v. Takacs*, 169 Ariz. 392, 395, 819 P.2d
19 978, 981 (App. 1991). Rule 6(E)(4)(e)(2) should be read to give the judicial
20 officer the discretion to narrowly tailor a restriction against the possession,
21 purchase or receipt of a firearm in a manner that conforms with the police
22 powers of the state to protect the health and welfare of its citizens. Read this
23 way, Rule 6(E)(4)(e)(2), in conjunction with A.R.S. § 12-1809, is not
24 unconstitutional as “The principle that reasonable limitations on the right to
25 bear arms do not offend individual constitutional rights is too well-embedded
in the jurisprudence of Arizona and sister states to be the subject of great

1 debate.” *Rineer*, 193 Ariz. at 166, 971 P.2d at 213. Furthermore, the Second
2 Amendment to the U.S. Constitution applies only to the Federal Government
3 and not the states. *Miller v. Texas*, 153 U.S. 535, 538, 14 S. Ct. 874 (1894);
4 *District of Columbia v. Heller*, 554 U.S. ___, 128 S. Ct. 2783, 2813(2008).¹

5 The plain language of A.R.S. § 12-1809 confers the power on a
6 judicial officer to grant whatever relief is necessary to the victim of
7 harassment. Although an overbroad restriction on a defendant’s use or
8 possession of firearms could be deemed unconstitutional, it is both necessary
9 and reasonable that a judicial officer have the ability and discretion to prevent
10 violence when harassment has been found and the judicial officer has inquired
11 into and has legitimate concerns about the defendant’s use and access to
12 weapons or firearms.
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15 RESPECTFULLY SUBMITTED this 24th day of March, 2010.

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18 John A. Furlong
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19 Electronic copy filed with the
20 Clerk of the Supreme Court this
24th day of March, 2010.

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22 By: Kathleen Lundgren
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25 ¹ *Heller*, cited by Petitioner in support of his petition, involved a total handgun ban by the District of Columbia – a federal district, not a state. The State Bar of Arizona takes notice of the pending Supreme Court case of *McDonald v. Chicago*; however, regardless of its outcome, this case pertains to a sweeping prohibition of handguns within a city and other broader regulations over the right to bear arms than discussed here.